J-Wood/A Tappan Division *and* Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC. Case 6-CA-14590

February 19, 1982

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

DECISION AND ORDER

Upon a charge filed on May 22, 1981, by Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC, herein called the Union, and duly served on J-Wood/A Tappan Division, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 6, issued a complaint on June 17, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on March 24, 1981, following a Board election in Case 6-RC-8788, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about May 5, 1981, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On June 26, 1981, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On September 8, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on September 14, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. On September 28, 1981, Respondent filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

The complaint alleges violations of Section 8(a)(1) and (5) of the Act by Respondent's refusal to bargain with the Union, since May 5, 1981, on all issues affecting the wages, hours, and other terms and conditions of employment of the employees in the unit found appropriate, and by its refusal to furnish information requested by the Union for the purposes of bargaining.

In its answer to the complaint and response to the Notice To Show Cause, Respondent admits the refusal to bargain and the refusal to provide the requested information but contends that it was not required to do either because the Union's certification in the underlying representation case is invalid. Thus, Respondent contends that the election held on August 8, 1980, should have been set aside because of threats of reprisals by the Union's inside organizers and because of material misrepresentations in a letter distributed to employees by the Union. In the alternative, Respondent contends that a hearing should be conducted on matters raised by its objections.

A review of the record reveals that, pursuant to a Stipulation for Certification Upon Consent Election in Case 6-RC-8788, an election was held on August 8, 1980, in the appropriate unit. The tally was 32 for, and 31 against, the Union. There were no challenged ballots. Thereafter, Respondent filed timely objections to the election. On December 3, 1980, the Regional Director for Region 6 issued his Report and Recommendation on Objections in which he recommended that the objections be overruled, and that a certification of representative be issued. Respondent filed exceptions to the Regional Director's Report and Recommendation on Objections with the Board. On March 24, 1981, the Board issued its Decision and Certification of Representative (not reported in volumes of Board Decisions) in which it adopted the Regional Director's findings and recommendations.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[2]

[1] Official notice is taken of the record in the representation proceeding, Case 6-RC-8788, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

[2] See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

All issues raised by Respondent in connection with the validity of the Certification of Representative were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding.[3] We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding in connection with the refusal-to-bargain allegations. Accordingly, we grant the Motion for Summary Judgment.

In addition to its refusal to bargain, Respondent also refused to provide information requested by the Union which the Union deemed necessary and relevant for the purpose of collective bargaining.[4] The Board has long held with court approval that the collective-bargaining duties imposed on an employer by Section 8(a)(5) of the Act include the obligation to provide its employees' bargaining representative with information which is relevant and necessary to collective bargaining.[5] We find that the information requested by the Union clearly constitutes information which has a direct bearing on the negotiation of wages, hours, and other terms and conditions of employment. As the information sought clearly encompasses matters which are mandatory subjects of bargaining, it is precisely that type of information which employers are required to provide to enable unions to bargain intelligently and fulfill their obligations as the selected representative of the employer's employees.[6] We therefore find that, by refusing to provide the information which was requested by the Union, Respondent has violated Section 8(a)(1) and (5) of the Act. Accordingly, we grant the Motion for Summary Judgment on the refusal-to-provide-information allegation.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a divison of Tappan Co., an Ohio corporation with an office and place of business located in Milroy, Pennsylvania, has been engaged, at all times material herein, in the manufacture and nonretail sale of custom kitchen cabinets, bathrooms vanities, and shelving. During the 12-month period ending April 30, 1981, Respondent, in the course and conduct of its operations, sold and shipped from its Milroy, Pennsylvania, facility products, goods, and materials valued in excess of $50,000 directly to points outside the Commonwealth of Pennsylvania. During this same 12-month period, Respondent, in the course and conduct of its operations, also purchased and received at its Milroy, Pennsylvania, facility products, goods, and materials valued in excess of $50,000 directly from points outside the Commonwealth of Pennsylvania.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All production and maintenance employees, including truckdrivers, and group leaders employed by Respondent at its J-Wood Division located in Milroy, Pennsylvania; excluding office clerical employees, watchmen and

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[3] We note that Respondent admits, in its response to the Notice To Show Cause, that the affirmative defenses raised in Respondent's answer "merely reiterate the issues which Respondent raised in Case 6 RC 8788," and that "no new factual issues have been raised." As to Respondent's reliance on certain circuit court decisions to support its request for a hearing, we would point out that the Board adopted the Regional Director's report in Case 6 RC 8788 that found, *inter alia*, that, even assuming the alleged threats occurred, they would not be sufficient to set aside the election.

[4] The Union sought information on vacation schedules, the number of holidays, shift differentials, employee seniority and classifications, rates of pay of employees, jury duty makeup pay, funeral leave pay, incentive systems, overtime premiums, and various information on the employees' pension and insurance plans.

In its answer Respondent contends, generally, that the Union is "not entitled" to such information. Respondent did not challenge the Union's right to the information on grounds that it is not relevant or necessary to collective bargaining. In its response to the Notice To Show Cause, Respondent says it has not admitted "that all of the information requested by the Union is presumptively relevant to enable the Union to perform its collective bargaining functions." Respondent does not, however, challenge any specific item of information requested by the Union in its April 8, 1981, letter (Exh. A of the General Counsel's Motion for Summary Judgment) nor explain why such information is not relevant or necessary to the Union's collective-bargaining functions.

[5] *N.L.R.B.* v. *Acme Industrial Co.*, 385 U.S. 432, 435-436 (1967).

[6] See *Dynamic Machine Co.*, 221 NLRB 1140 (1975), and cases cited therein at fn. 14.

guards, professional employees and supervisors as defined in the Act.

2. The certification

On August 8, 1980, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 6, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on March 24, 1981, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about April 8, 1981, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about May 5, 1981, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since May 5, 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. J-Wood/A Tappan Division is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees, including truckdrivers, and group leaders employed by Respondent at its J-Wood Division located in Milroy, Pennsylvania, excluding office clerical employees, watchmen and guards, professional employees and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since March 24, 1981, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about May 5, 1981, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By refusing on or about May 5, 1981, and at all times thereafter, to provide the above-named labor organization with the information requested by it for the purposes of collective bargaining, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

7. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, J-Wood/A Tappan Division, Milroy, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All production and maintenance employees, including truckdrivers, and group leaders employed by Respondent at its J-Wood Division located in Milroy, Pennsylvania; excluding office clerical employees, watchmen and guards, professional employees and supervisors as defined in the Act.

(b) By refusing to provide the above-named labor organization with information requested by it for the purpose of collective bargaining.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Upon request, provide the above-named labor organization with information requested by it for the purpose of collective bargaining.

(c) Post at its Milroy, Pennsylvania, facility copies of the attached notice marked "Appendix."[7] Copies of said notice, on forms provided by the Regional Director for Region 6, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 6, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[7] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT refuse to provide the above-named labor organization with information requested by it for the purpose of collective bargaining.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All production and maintenance employees, including truckdrivers, and group leaders employed by Respondent at its J-Wood Division located in Milroy, Pennsylvania; excluding office clerical employees, watchmen and guards, professional employees and supervisors as defined in the Act.

WE WILL, upon request, provide the above-named labor organization with information requested by it for the purpose of collective bargaining.

J-WOOD/A TAPPAN DIVISION